

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1749 of 1996

UMESHDUTT KAILASH MATHUR

Versus

DEPUTY COMMISSIONER OF FISHERIES

Appearance:

MR VIJAY H PATEL for Petitioner

MR MUKESH R SHAH for Respondent No. 3, 4

CORAM : MR.JUSTICE S.D.PANDIT

Date of Order: 24/01/97

ORAL ORDER

1. Rule. I have heard both the sides at length on merits and hence I proceed to dispose of this petition finally. The present petition is filed by petitioner Umeshdutt Kailash Mathur to challenge the acceptance of the tender by respondents No. 1 and 2 in respect of the rights of fisheries as regards fishing in the reservoir of Kadana.

2. The respondent No.1 issued a public notice calling tenders for the purpose of giving fisheries right in Kadana Reservoir by giving advertisement in the local newspaper on 1st of July, 1995. In pursuance to the said public notice, it seems that only two tenders were received. One was by the present petitioner offering an amount of Rs. 8 lacs per annum whereas the second tender was by Kadana Jalasay Matsya Udyog Sahakari Mandli, respondent No.3 for an amount of Rs. 9,00,006/- per annum. The respondent No.1 accepted the tender offered by respondent No.3 and gave the contract to respondent No.3.

3. The petitioner has come before the Court to challenge the giving of the said contract to respondent

No.3 and accepting the tender in question. He is challenging the said contract on two grounds - (1) that there was no deposit of the 10 per cent of the tender amount along with the tender by respondent No.3 and (2) that the tender accepted by the respondent No.1 was not a tender of respondent No.3 but it was a joint tender of respondents No. 3 and 4 and, therefore, it was contrary to the terms and conditions of tender published by respondent No.1.

4. The claim of the petitioner is resisted by respondents No. 1 and 2 as well as respondents No. 3 and 4. It is the contention of the respondents that the claim of the petitioner that the respondent No.3 had not deposited 10 per cent of the tender amount was not correct and is a matter of fact the 10 per cent of the tender amount was tendered by respondent No.3. It is the further contention of both the respondents No. 1 and 2 and Respondent No.3 that the tender which was received by respondent No.1 was the tender of Respondent No.3 alone and that the said tender is accepted for and on behalf of respondent 3 alone and contract in question has been given to respondent No.3 alone and, therefore, no commission of illegality in giving the contract in question to respondent No.3 and thus it is contended that the present petition be dismissed.

5. In the affidavits of both respondent No.3 as well as respondent No.4 Deputy Commissioner of Fisheries, it has been clearly mentioned that along with the tender amount of 63,653/-, was paid as an earnest money and an amount of Rs. 23,353/- was already deposited by the respondent No.3 as per the earlier advertisement on 25th of September, 1995. The respondent No. 3 had sought adjustment of the said amount towards the 10 per cent of the amount to be tendered at the time of filing of the said tender. Therefore, in view of the said position, an amount of Rs. 63,653/- was deposited by the respondent No.3 along with the tender and seeking adjustment of Rs. 23,353/- which was lying with the respondent No.1 belonging to the respondent No.3, it can not be said that there was no deposit of 10 per cent of the amount by the respondent No.3 along with the tender given by respondent No.3.

6. Before going to consider the second contention for challenging the said contract in question, it must be stated that the contract in question is a contract governed by law of contract and there is no involvement of infringement of any fundamental right of either of the petitioner or of the respondents No. 3 to 5. No doubt,

when the action of a public officer is in question, the said action must be rational and reasonable, and it is not open for the public officer to contend that the transaction being covered by private law, it is open to him to behave as he likes. Therefore, one has to see as to whether the action of the respondent No. 1 accepting the tender of Respondent No.3 is contrary to the terms and conditions of tender published by respondent No.1 or not in the circumstances of the case and whether the action of the respondent No.1 is rational and reasonable.

7. It has been clearly mentioned on behalf respondent No.1 Deputy Commissioner of Fisheries in his that though the tender was said to be jointly in the name of respondents No. 3 and 4, the tender in question is treated as tender of respondent No.3 alone. It is the further claim of Respondent No.3 that the 10 per cent of the tender amount was deposited by respondent No.3 and respondents No.3 and 4 had accepted the decision of the respondent No.1 to treat offer is that of respondent No.3 alone. It must be remembered that respondent No.3 and respondent No.4 are the co-operative societies. It has been clearly mentioned by respondent No.3 in its affidavit that their members' lands have been acquired for the said Kadana reservoir. It has also further been mentioned that the members of the said society are adivasis. The respondent No. 1 has passed a speaking order at a time accepting the said tender and in the said speaking order it has been mentioned that the preference was given to respondents No.3 as respondent No.3 is a co-operative society. It must also be mentioned that the offer given by the present petitioner was an offer of Rs. 8 lacs per annum whereas the offer of respondent No.3 was of Rs. 9,00,006/- per annum. Under condition No. 9 of the tender, it is mentioned that if the offer is given by more than one person, the same may not be accepted. The said condition therefore leaves a scope for the respondent No. 1 either to accept or not to accept such offer, which is given by more than one person. It must be remembered that condition No.9 does not say that no offer can be given by more than one person but a condition that if the person is more than one person, it may not be accepted. Therefore, condition No.9 is leaving a scope for respondent No.1 either to accept the offer or not to accept such offer if the offer is given by more than one person. In the instance case though the offer was jointly given by two cooperative societies, the respondent No.1 had treated the said offer only the offer of Respondent No.3 and by treating that offer is the offer of Respondent No.3 alone, respondent No.1 has accepted the same as the tender of Respondent No.3. The

said tender of respondent No.3 is accepted in view of the policy laid down by the State Government in its resolution dated 24th July, 1995 which says that preference must be given to cooperative societies. Therefore, the reasons given by respondent No.1 as to why he has accepted the tender in question is considered, then, it is very difficult to hold that action of respondent No.1 is either illegal or irrational so as to hold that the acceptance of the said tender is illegal and that the same should be quashed by exercising the powers under Article 226 of the Constitution of India. I, therefore, hold that the present petition will have to be dismissed and I dismiss the same.

8. Rule is discharged with no order as to costs.
